



Reprinted
April 7, 2009

ENGROSSED HOUSE BILL No. 1514

DIGEST OF HB 1514 (Updated April 6, 2009 2:43 pm - DI 106)

Citations Affected: IC 5-4; IC 5-11; IC 5-14; IC 23-1; IC 23-17; IC 30-4; IC 34-25.

Synopsis: Accounting for public funds. Increases the required surety bond for certain officials, and provides that the state board of accounts may require a higher surety bond for officials who have engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds. Requires a deputy examiner, field examiner, or private examiner to make a preliminary report to the state examiner if: (1) a substantial amount of public funds has been misappropriated or diverted or is
(Continued next page)

Effective: July 1, 2009; January 1, 2010.

GiaQuinta, Eberhart

(SENATE SPONSORS — BRAY, LANANE, MRVAN)

January 14, 2009, read first time and referred to Committee on Ways and Means.
February 19, 2009, reported — Do Pass.
February 23, 2009, read second time, ordered engrossed. Engrossed.
February 25, 2009, read third time, passed. Yeas 67, nays 25.

SENATE ACTION

March 3, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
March 10, 2009, amended, reported favorably — Do Pass.
March 12, 2009, read second time, amended, ordered engrossed.
March 13, 2009, engrossed.
March 17, 2009, returned to second reading.
March 23, 2009, reread second time, amended, ordered engrossed.
March 24, 2009, re-engrossed.
March 31, 2009, returned to second reading.
April 6, 2009, reread second time, amended, ordered engrossed.

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unaccounted for; (2) there is a reasonable likelihood that the final examination report will include a finding that the entity that is the subject of the report failed to observe a uniform compliance guideline or failed to comply with a specific law; or (3) the malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with laws regarding maintaining and accounting for the funds. Requires the state examiner to provide a copy of the report to the attorney general, and authorizes the attorney general to bring a civil action against the delinquent employee or the official bond to recover misappropriated funds. Authorizes the attorney general to attach the assets of the delinquent employee. Requires certain disclosures from persons who receive payments pursuant to a development agreement. Makes conforming amendments.

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Reprinted
April 7, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1514

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-4-1-18, AS AMENDED BY P.L.146-2008,
2 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection (b), the
4 following city, town, county, or township officers and employees shall
5 file an individual surety bond:

6 (1) City judges, controllers, clerks, and clerk-treasurers.

7 (2) Town judges and clerk-treasurers.

8 (3) Auditors, treasurers, recorders, surveyors, sheriffs, coroners,
9 assessors, and clerks.

10 (4) Township trustees.

11 (5) Those employees directed to file an individual bond by the
12 fiscal body of a city, town, or county.

13 (6) Township assessors (if any).

14 (b) The fiscal body of a city, town, county, or township may by
15 ordinance authorize the purchase of a blanket bond or a crime
16 insurance policy endorsed to include faithful performance to cover the
17 faithful performance of all employees, commission members, and

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persons acting on behalf of the local government unit, including those officers described in subsection (a).

(c) **Except as provided in subsections (h) and (i),** the fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law fund custodians, county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

(1) The amount must equal ~~fifteen~~ **twenty** thousand dollars ~~(\$15,000)~~ **(\$20,000)** for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).

(2) The amount may not be less than ~~fifteen~~ **twenty** thousand dollars ~~(\$15,000)~~ **(\$20,000)** nor more than three hundred thousand dollars (\$300,000).

County auditors shall file bonds in amounts of not less than fifteen thousand dollars (\$15,000), as fixed by the fiscal body of the county. The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than ~~eight ten~~ thousand ~~five hundred~~ dollars ~~(\$8,500)~~ **(\$10,000)**.

(d) **Except as provided in subsection (j),** a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file an individual surety bond in an amount:

(1) fixed by the board of directors of the solid waste management district; and

(2) that is at least ~~fifteen~~ **twenty** thousand dollars ~~(\$15,000)~~ **(\$20,000)**.

(e) Except as provided under subsection (d), a person who is required to file an individual surety bond by the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file a bond in an amount fixed by the board of directors.

(f) In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report in an electronic format under IC 5-14-6 to the general assembly whether changes are necessary to ensure adequate and economical coverage.

(g) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section, in consultation with the commission on public records under IC 5-15-5.1-6.

(h) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for a city controller, city clerk-treasurer, town clerk-treasurer, Barrett Law fund custodian, county treasurer, county sheriff, circuit court clerk, township

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trustee, or conservancy district financial clerk at an amount that exceeds twenty thousand dollars (\$20,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. However, the bond amount may not exceed three hundred thousand dollars (\$300,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the officer engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(i) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for any person who is not described in subsection (h) and is required to file an individual bond at an amount that exceeds ten thousand dollars (\$10,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the person engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(j) Notwithstanding subsection (d), the state board of accounts may fix the amount of the bond for a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) at an amount that exceeds twenty thousand dollars (\$20,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the controller engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

SECTION 2. IC 5-11-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever an examination is made under this article, a report of the examination shall be made. The report must include a list of findings and shall be signed and verified by the examiner making the examination. A finding that is critical of an examined entity must be based upon one (1) of the following:

- (1) Failure of the entity to observe a uniform compliance guideline established under IC 5-11-1-24(a).
- (2) Failure of the entity to comply with a specific law.

A report that includes a finding that is critical of an examined entity must designate the uniform compliance guideline or the specific law upon which the finding is based. The reports shall immediately be filed

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with the state examiner, and, after inspection of the report, the state examiner shall immediately file one (1) copy with the officer or person examined, one (1) copy with the auditing department of the municipality examined and reported upon, and one (1) copy in an electronic format under IC 5-14-6 of the reports of examination of state agencies, instrumentalities of the state, and federal funds administered by the state with the legislative services agency, as staff to the general assembly. Upon filing, the report becomes a part of the public records of the office of the state examiner, of the office or the person examined, of the auditing department of the municipality examined and reported upon, and of the legislative services agency, as staff to the general assembly. A report is open to public inspection at all reasonable times after it is filed. If an examination discloses malfeasance, misfeasance, or nonfeasance in office or of any officer or employee, a copy of the report, signed and verified, shall be placed by the state examiner with the attorney general. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer, or upon the officer's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(b) Before an examination report is signed, verified, and filed as required by subsection (a), the officer or the chief executive officer of the state office, municipality, or entity examined must have an opportunity to review the report and to file with the state examiner a written response to that report. If a written response is filed, it becomes a part of the examination report that is signed, verified, and filed as required by subsection (a).

(c) Except as required by subsection (b) **and subsection (d)**, it is unlawful for any deputy examiner, field examiner, or private examiner, before an examination report is made public as provided by this section, to make any disclosure of the result of any examination of any public account, except to the state examiner or if directed to give publicity to the examination report by the state examiner or by any court. If an examination report shows or discloses the commission of a crime by any person, it is the duty of the state examiner to transmit and present the examination report to the grand jury of the county in which the crime was committed at its first session after the making of the examination report and at any subsequent sessions that may be required. The state examiner shall furnish to the grand jury all evidence at the state examiner's command necessary in the investigation and prosecution of the crime.

(d) If, during an examination under this article, a deputy

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examiner, field examiner, or private examiner acting as an agent of the state examiner determines that the following conditions are satisfied, the examiner shall report the determination to the state examiner:

(1) A substantial amount of public funds has been misappropriated or diverted or is unaccounted for.

(2) There is a reasonable likelihood that the final report under subsection (a) will include a finding that the entity failed to observe a uniform compliance guideline established under IC 5-11-1-24(a) or a finding that the entity failed to comply with a specific law.

(3) The malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with laws regarding maintaining and accounting for the funds.

(e) After receiving a preliminary report under subsection (d), the state examiner shall provide a copy of the report to the attorney general. The attorney general may institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(f) In an action under subsection (e), the attorney general may attach the defendant's property under IC 34-25-2.

(g) A preliminary report under subsection (d) is confidential until the final report under subsection (a) is issued, unless the attorney general institutes an action under subsection (e) on the basis of the preliminary report.

SECTION 3. IC 5-11-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, upon the petition of twenty-five (25) interested taxpayers showing that effective local relief has not and cannot be obtained after due effort, shall make the inquiries, tests, examinations, and investigations that may be necessary to determine whether:

(1) any public contract has been regularly and lawfully executed and performed; or

(2) any public work, building, or structure has been or is being performed, built, or constructed in accordance with the terms and

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provisions of the contract, and in compliance with the plans and specifications, if any.

Upon a written petition of twenty-five (25) taxpayers the state examiner may also require all plans, specifications, and estimates to be submitted to the state examiner for corrections and approval before a contract is awarded.

(b) The state examiner, deputy examiner, and any field examiner, when engaged in making an inquiry, test, examination, or investigation under subsection (a), is entitled to examine and inspect any public records, documents, data, contracts, plans, and specifications contained or found in any public office or other place pertaining or relating to the public contract or public work, building, or structure. In addition, subpoenas may be issued to witnesses to appear before the examiner in person or to produce books and papers for inspection and examination. The state examiner, deputy, field, and private examiner may administer oaths and examine witnesses under oath either orally or by interrogatories on all matters under examination and investigation. Under order of the state examiner, the examination may be transcribed, with the reasonable expense paid by the municipality in the same manner as the compensation of the field examiner is paid.

(c) The state examiner, the deputy examiner, and a field examiner may enforce attendance and answers to questions and interrogatories, as provided by law, with respect to examinations and investigations made by the state examiner, deputy examiner, field examiner, or private examiner of public offices.

(d) The state examiner, deputy examiner, any field examiner, and any private examiner, when making an examination or investigation under subsection (a), shall examine, inspect, and test the public works, buildings, or structures in the manner that the examiner sees fit to determine whether it is being performed, built, or constructed according to the contract and plans and specifications.

(e) The state examiner shall file a report covering any examination or investigation that discloses:

(1) fraud, collusion, misconduct, or negligence in the letting or the execution of any public contract or in the performance of any of the terms and conditions of any public contract; or

(2) any failure to comply with the terms or conditions of any public contract in the construction of any public work, building, or structure or to perform, build, or construct it according to the plans and specifications, if any, provided in the contract;

that causes loss, injury, waste, or damage to the state, the municipality, taxing or assessment district, other public entity, or to its citizens, if it

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is enforceable by assessment or taxation.

(f) The report must ~~be~~ **meet the following requirements:**

(1) **The report must be** made, signed, and verified in quadruplicate by the examiner making the examination. ~~and~~

(2) **The report may be** filed promptly with the state examiner **at the time the matter is discovered and before the audit is concluded, subject to subsection (j).**

After inspection of the report, the state examiner shall file a copy of the report **promptly** with the attorney general.

(g) The attorney general shall diligently institute and prosecute civil proceedings against any or all officers, individuals, and persons in the form and manner that the attorney general determines will secure a proper recovery to the state, municipality, taxing or assessment district, or other public entity injured, defrauded, or damaged by the matters in the report. These prosecutions may be made by the attorney general and the recovery may be had, either upon public official bonds, contractors' bonds, surety or other bonds, or upon individual liability, either upon contract or in tort, as the attorney general determines is wise. No action or recovery in any form or manner, or against any party or parties, precludes further or additional action or recovery in any other form or manner or against another party, either concurrently with or later found necessary, to secure complete recovery and restitution with respect to all matters exhibited, set out, or described in the report. The suits may be brought in the name of the state on the relation of the attorney general for the benefit of the state, or the municipality, taxing or assessment district, or other public entity that may be proper. The actions brought against any defendants may be joined, as to parties, form, and causes of action, in the manner that the attorney general decides.

(h) Any report described in this section or a copy duly certified by the state examiner shall be taken and received in any and all courts of this state as prima facie evidence of the facts stated and contained in the reports.

(i) If an examination, investigation, or test is made without a petition being first filed and the examination, investigation, or test shows that the terms of the contract are being complied with, then the expense of the examination, investigation, or test shall be paid by the state upon vouchers approved by the state examiner from funds available for contractual service of the state board of accounts. If such a report shows misfeasance, malfeasance, or nonfeasance in public office or shows that the terms of the plans and specifications under which a contract has been awarded are not being complied with, it is unlawful

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to make the report public until the report has been certified to the attorney general.

(j) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent of the state examiner determines that all of the following conditions are satisfied, the examiner shall report the determination to the state examiner:

(1) A substantial amount of public funds has been misappropriated or diverted or is unaccounted for.

(2) There is a reasonable likelihood that the final report under subsection (e) or (f) will include a finding that a public contract has not been regularly and lawfully executed and performed or that a public work, building, or structure has not been or is not being performed, built, or constructed in accordance with the terms and provisions of the contract, and in compliance with the plans and specifications, if any.

(3) The malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with the terms of the public contract and laws regarding maintaining and accounting for the funds received in connection with a public contract.

(k) After receiving a preliminary report under subsection (j), the state examiner shall provide a copy of the report to the attorney general. The attorney general may institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(l) In an action under subsection (k), the attorney general may attach the defendant's property under IC 34-25-2.

(m) A preliminary report under subsection (j) is confidential until the final report under subsection (e) is issued, unless the attorney general institutes an action under subsection (k) on the basis of the preliminary report.

SECTION 4. IC 5-14-3-3, AS AMENDED BY P.L.2-2007, SECTION 100, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in ~~section~~ sections 4

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and 4.4 of this chapter. A request for inspection or copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

- (1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.
- (2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who

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1 uses information in a manner contrary to a rule or ordinance adopted
 2 under this subsection may be prohibited by the state agency or political
 3 subdivision from obtaining a copy or any further data under subsection
 4 (d).

5 (f) Notwithstanding the other provisions of this section, a public
 6 agency is not required to create or provide copies of lists of names and
 7 addresses (including electronic mail account addresses) unless the
 8 public agency is required to publish such lists and disseminate them to
 9 the public under a statute. However, if a public agency has created a list
 10 of names and addresses (excluding electronic mail account addresses)
 11 it must permit a person to inspect and make memoranda abstracts from
 12 the list unless access to the list is prohibited by law. The lists of names
 13 and addresses (including electronic mail account addresses) described
 14 in subdivisions (1) through (3) may not be disclosed by public agencies
 15 to any individual or entity for political purposes and may not be used
 16 by any individual or entity for political purposes. In addition, the lists
 17 of names and addresses (including electronic mail account addresses)
 18 described in subdivisions (1) through (3) may not be disclosed by
 19 public agencies to commercial entities for commercial purposes and
 20 may not be used by commercial entities for commercial purposes. The
 21 prohibition in this subsection against the disclosure of lists for political
 22 or commercial purposes applies to the following lists of names and
 23 addresses (including electronic mail account addresses):

- 24 (1) A list of employees of a public agency.
- 25 (2) A list of persons attending conferences or meetings at a state
- 26 educational institution or of persons involved in programs or
- 27 activities conducted or supervised by the state educational
- 28 institution.
- 29 (3) A list of students who are enrolled in a public school
- 30 corporation if the governing body of the public school corporation
- 31 adopts a policy:
 - 32 (A) with respect to disclosure related to a commercial purpose,
 - 33 prohibiting the disclosure of the list to commercial entities for
 - 34 commercial purposes;
 - 35 (B) with respect to disclosure related to a commercial purpose,
 - 36 specifying the classes or categories of commercial entities to
 - 37 which the list may not be disclosed or by which the list may
 - 38 not be used for commercial purposes; or
 - 39 (C) with respect to disclosure related to a political purpose,
 - 40 prohibiting the disclosure of the list to individuals and entities
 - 41 for political purposes.

42 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform

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and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

(g) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records; or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

SECTION 5. IC 5-14-3-4.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 4.4. (a) Except as provided in subsection (b), disbursement information reported to the attorney general under IC 23-1-53-1(c), IC 23-17-27-6(c), and IC 30-4-5-12(e) is excepted from section 3 of this chapter if both of the following apply:**

(1) The disbursement was made with respect to negotiations with an industrial, research, or commercial prospect for the purpose of persuading the prospect to invest in the locality, to build or relocate a business or organization in the locality, or to perform or provide other economic development services or benefits for the locality.

(2) The person required to prepare the annual report under IC 23-1-53-1(c), IC 23-17-27-6(c), or IC 30-4-5-12(e) specifies in the annual report that the disbursement was made for a purpose set forth in subsection (a)(1) and requests that it be excepted from section 3 of this chapter.

(b) The exception provided under subsection (a) does not apply if:

(1) the attorney general determines that a violation of applicable state or federal law relating to the disbursement has occurred and the attorney general takes enforcement action under the applicable law; or

(2) the attorney general, in furtherance of an investigation,

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1 refers the disbursement information to a state, federal, or
 2 local law enforcement agency or a government agency with
 3 responsibility for enforcement of state or federal law, or a
 4 local ordinance, and the agency receiving the disbursement
 5 information from the attorney general determines that a
 6 violation of applicable law has occurred and takes
 7 enforcement action under the applicable law.

8 SECTION 6. IC 23-1-20-6.1 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 10 JANUARY 1, 2010]: **Sec. 6.1. "Development agreement" means an**
 11 **agreement that:**

12 (1) is between:

13 (A) the direct or indirect holder of an owner's license
 14 issued under IC 4-33 or an operating agent contract (as
 15 defined in IC 4-33-2-14.6); and

16 (B) either:

17 (i) a person; or

18 (ii) a unit of local government; and

19 (2) sets forth the holder's financial commitments to support
 20 economic development in a unit or a geographic region.

21 SECTION 7. IC 23-1-20-6.2 IS ADDED TO THE INDIANA CODE
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 23 JANUARY 1, 2010]: **Sec. 6.2. "Development agreement payment"**
 24 **means any payment that a direct or indirect holder of:**

25 (1) an owner's license under IC 4-33; or

26 (2) an operating agent contract (as defined in IC 4-33-2-14.6);
 27 **is required to make under a development agreement.**

28 SECTION 8. IC 23-1-53-1 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. (a) On written
 30 request of any shareholder, a corporation shall prepare and mail to the
 31 shareholder annual financial statements, which may be consolidated or
 32 combined statements of the corporation and one (1) or more of its
 33 subsidiaries, as appropriate, that include a balance sheet as of the end
 34 of the fiscal year most recently completed, an income statement for that
 35 year, and a statement of changes in shareholders' equity for that year
 36 unless that information appears elsewhere in the financial statements.
 37 If financial statements are prepared for the corporation on the basis of
 38 generally accepted accounting principles, the annual financial
 39 statements must also be prepared on that basis.

40 (b) If the annual financial statements are reported upon by a public
 41 accountant, the public accountant's report must accompany them. If not,
 42 the statements must be accompanied by a statement of the president or

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the person responsible for the corporation's accounting records:

- (1) stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
- (2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) If a corporation is a recipient of a local development agreement payment, the corporation shall prepare an annual report containing the following information before February 1 of each year:

(1) A verified accounting of all accounts associated with local development agreement payments received in the preceding calendar year.

(2) An itemized list of all disbursements of local development agreement payments made to any person exceeding five thousand dollars (\$5,000) in the aggregate during the preceding calendar year. The itemized list must include:

- (A) the legal name of the recipient of a disbursement;**
- (B) the date of each disbursement;**
- (C) the amount of each disbursement; and**
- (D) the purpose of each disbursement.**

(d) The principal officer of a corporation subject to subsection (c) shall annually, before March 1 of each year, file with the attorney general a verified written certification stating that an annual report has been prepared showing at least the items listed in subsection (c). The certification must state that the annual report is available to the attorney general upon request.

SECTION 9. IC 23-17-2-15.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 15.1. "Development agreement" means an agreement that:**

(1) is between:

(A) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and

(B) either:

- (i) a person; or**
- (ii) a unit of local government; and**

(2) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

SECTION 10. IC 23-17-2-15.2 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JANUARY 1, 2010]: **Sec. 15.2. "Development
agreement payment" means any payment that a direct or indirect
holder of:**

(1) an owner's license under IC 4-33; or

**(2) an operating agent contract (as defined in IC 4-33-2-14.6);
is required to make under a development agreement.**

SECTION 11. IC 23-17-27-6 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 6. (a) Except as
provided in articles of incorporation or bylaws of a religious
corporation, a corporation upon written demand from a member shall
furnish the member the corporation's latest annual financial statements,
which may be consolidated or combined statements of the corporation
and the corporation's subsidiaries or affiliates, as appropriate, that
include a balance sheet as of the end of the fiscal year and statement of
operations for that year. If financial statements are prepared for the
corporation on the basis of generally accepted accounting principles,
the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a certified
public accountant, the accountant's report must accompany the
statements. If annual financial statements are not reported upon by a
certified public accountant, the statements must be accompanied by the
statement of the president or the person responsible for the
corporation's financial accounting records that does the following:

(1) States the president's or other person's reasonable belief as to
whether the statements were prepared on the basis of generally
accepted accounting principles and, if not, describes the basis of
preparation.

(2) Describes any respects in which the statements were not
prepared on a basis of accounting consistent with the statements
prepared for the preceding year.

**(c) If a corporation is a recipient of a local development
agreement payment, the corporation shall prepare an annual
report containing the following information before February 1 of
each year:**

**(1) A verified accounting of all accounts associated with local
development agreement payments received in the preceding
calendar year.**

**(2) An itemized list of all disbursements of local development
agreement payments made to any person exceeding five
thousand dollars (\$5,000) in the aggregate during the
preceding calendar year. The itemized list must include:**

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- (A) the legal name of the recipient of a disbursement;
- (B) the date of each disbursement;
- (C) the amount of each disbursement; and
- (D) the purpose of each disbursement.

(d) The principal officer of a corporation subject to subsection (c) shall annually, before March 1 of each year, file with the attorney general a verified written certification stating that an annual report has been prepared showing at least the items listed in subsection (c). The certification must state that the annual report is available to the attorney general upon request.

SECTION 12. IC 30-4-1-2, AS AMENDED BY P.L.61-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.
- (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.
- (4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.
- (5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.
- (6) "Court" means a court having jurisdiction over trust matters.
- (7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.
- (8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.
- (9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.
- (10) "Minor" means any person under the age of eighteen (18)

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years.

(11) "Person" has the meaning set forth in IC 30-2-14-9.

(12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

(13) "Principal" has the meaning set forth in IC 30-2-14-10.

(14) "Qualified beneficiary" means:

(A) a beneficiary who, on the date the beneficiary's qualification is determined:

(i) is a distributee or permissible distributee of trust income or principal;

(ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;

(iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

(iv) has sent the trustee a request for notice;

(v) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;

(vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or

(vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Trust estate" means the trust property and the income derived from its use.

(18) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in

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IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(19) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(20) "Trustee" has the meaning set forth in IC 30-2-14-13.

(21) "Development agreement" means an agreement that:

(A) is between:

(i) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and

(ii) either a person or a unit of local government; and

(B) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

(22) "Development agreement payment" means any payment that a direct or indirect holder of:

(A) an owner's license under IC 4-33; or

(B) an operating agent contract (as defined in IC 4-33-2-14.6);

is required to make under a development agreement.

SECTION 13. IC 30-4-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

(1) all receipts and disbursements since the last statement; and

(2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a

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1 provision in a will, trust agreement, indenture, or other governing
 2 instrument. This subsection does not prevent a trustee from docketing
 3 a charitable trust to finalize a written statement of account or any other
 4 lawful purpose in the manner provided in this article. However, this
 5 subsection does not apply to an organization that is not required to file
 6 a federal information return under Section 6033(a)(2)(A)(i) or Section
 7 6033(a)(2)(A)(ii) of the Internal Revenue Code.

8 (c) Upon petition by the settlor, a beneficiary or ~~his~~ **the**
 9 **beneficiary's** personal representative, a person designated by the
 10 settlor to have advisory or supervisory powers over the trust, or any
 11 other person having an interest in the administration or the benefits of
 12 the trust, including the attorney general in the case of a trust for a
 13 benevolent public purpose, the court may direct the trustee to file a
 14 verified written statement of accounts showing the items listed in
 15 section 13(a) of this chapter. The petition may be filed at any time,
 16 provided, however, that the court will not, in the absence of good cause
 17 shown, require the trustee to file a statement more than once a year.

18 (d) If the court's jurisdiction is of a continuing nature as provided in
 19 IC 30-4-6-2, the trustee shall file a verified written statement of
 20 accounts containing the items shown in section 13(a) of this chapter
 21 with the court biennially, and the court may, on its own motion, require
 22 the trustee to file such a statement at any other time provided there is
 23 good cause for requiring a statement to be filed.

24 (e) **If a charitable trust or trust for a benevolent public purpose**
 25 **is a recipient of a local development agreement payment, the**
 26 **trustee shall, before February 1 of each year, prepare an annual**
 27 **report containing the following information:**

28 (1) **A verified accounting of all accounts associated with local**
 29 **development agreement payments received in the preceding**
 30 **calendar year.**

31 (2) **An itemized list of all disbursements of local development**
 32 **agreement payments exceeding five thousand dollars (\$5,000)**
 33 **in the aggregate made to any person during the preceding**
 34 **calendar year. The itemized list must include:**

35 (A) **the legal name of the recipient of a disbursement;**

36 (B) **the date of each disbursement;**

37 (C) **the amount of each disbursement; and**

38 (D) **the purpose of each disbursement.**

39 (f) **The trustee of a trust subject to subsection (e) shall annually**
 40 **file with the attorney general a verified written certification before**
 41 **March 1 stating that an annual report has been prepared showing**
 42 **at least the items listed in subsection (e). The certification must**

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1 state that the annual report is available to the attorney general
2 upon request.

3 SECTION 14. IC 34-25-2-1 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) At or after the
5 time of filing a complaint, the plaintiff may have an attachment against
6 the property of the defendant, in the cases described in subsection (b)
7 and in the manner described in this chapter.

8 (b) The plaintiff may attach property when the action is for the
9 recovery of money and the defendant:

10 (1) is, or one (1) of several defendants is, a foreign corporation or
11 a nonresident of Indiana;

12 (2) is, or one (1) of several defendants is, secretly leaving or has
13 left Indiana with intent to defraud:

14 (A) the defendant's creditors;

15 (B) the state;

16 (C) a municipal corporation;

17 (D) a political subdivision; or

18 (E) a school corporation (as defined in IC 20-18-2-16(c));

19 (3) is concealed so that a summons cannot be served upon the
20 defendant;

21 (4) is removing or about to remove the defendant's property
22 subject to execution, or a material part of the property, outside
23 Indiana, not leaving enough behind to satisfy the plaintiff's claim;

24 (5) has sold, conveyed, or otherwise disposed of the defendant's
25 property subject to execution, or permitted the property to be sold
26 with the fraudulent intent to cheat, hinder, or delay:

27 (A) the defendant's creditors;

28 (B) the state;

29 (C) a municipal corporation;

30 (D) a political subdivision; or

31 (E) a school corporation (as defined in IC 20-18-2-16(c));

32 or

33 (6) is about to sell, convey, or otherwise dispose of the defendant's
34 property subject to execution with the fraudulent intent to cheat,
35 hinder, or delay:

36 (A) the defendant's creditors;

37 (B) the state;

38 (C) a municipal corporation;

39 (D) a political subdivision; or

40 (E) a school corporation (as defined in IC 20-18-2-16(c)).

41 (c) The plaintiff is entitled to an attachment for the causes
42 mentioned in subsection (b)(2), (b)(4), (b)(5), and (b)(6) whether the

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1 cause of action is due or not.
 2 SECTION 15. IC 34-25-2-5 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Except for actions**
 4 **filed by the attorney general under IC 5-11-5-1 or IC 5-11-6-1**, the
 5 plaintiff or a person representing the plaintiff shall execute a written
 6 undertaking, with sufficient surety, to be approved by the clerk, payable
 7 to the defendant, to the effect that the plaintiff will:
 8 (1) duly prosecute the proceeding in attachment; and
 9 (2) pay all damages that may be sustained by the defendant if the
 10 proceedings of the plaintiff are wrongful and oppressive.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1514, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 19, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1514, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 28, delete "," and insert "**and subsection (d),**".

Page 5, delete lines 26 through 36.

Page 5, line 37, delete "(g)" and insert "**(f)**".

Page 5, line 37, delete "not a part of" and insert "**confidential**".

Page 5, line 38, delete "public records of the state examiner".

Page 5, line 39, delete "." and insert ", **unless the attorney general institutes an action under subsection (e) on the basis of the preliminary report.**".

Page 5, after line 39, begin a new paragraph and insert:

"SECTION 3. IC 5-11-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, upon the petition of twenty-five (25) interested taxpayers showing that effective local relief has not and cannot be obtained after due effort, shall make the inquiries, tests, examinations, and investigations that may be necessary to determine whether:

(1) any public contract has been regularly and lawfully executed and performed; or

(2) any public work, building, or structure has been or is being performed, built, or constructed in accordance with the terms and provisions of the contract, and in compliance with the plans and specifications, if any.

Upon a written petition of twenty-five (25) taxpayers the state examiner may also require all plans, specifications, and estimates to be submitted

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to the state examiner for corrections and approval before a contract is awarded.

(b) The state examiner, deputy examiner, and any field examiner, when engaged in making an inquiry, test, examination, or investigation under subsection (a), is entitled to examine and inspect any public records, documents, data, contracts, plans, and specifications contained or found in any public office or other place pertaining or relating to the public contract or public work, building, or structure. In addition, subpoenas may be issued to witnesses to appear before the examiner in person or to produce books and papers for inspection and examination. The state examiner, deputy, field, and private examiner may administer oaths and examine witnesses under oath either orally or by interrogatories on all matters under examination and investigation. Under order of the state examiner, the examination may be transcribed, with the reasonable expense paid by the municipality in the same manner as the compensation of the field examiner is paid.

(c) The state examiner, the deputy examiner, and a field examiner may enforce attendance and answers to questions and interrogatories, as provided by law, with respect to examinations and investigations made by the state examiner, deputy examiner, field examiner, or private examiner of public offices.

(d) The state examiner, deputy examiner, any field examiner, and any private examiner, when making an examination or investigation under subsection (a), shall examine, inspect, and test the public works, buildings, or structures in the manner that the examiner sees fit to determine whether it is being performed, built, or constructed according to the contract and plans and specifications.

(e) The state examiner shall file a report covering any examination or investigation that discloses:

(1) fraud, collusion, misconduct, or negligence in the letting or the execution of any public contract or in the performance of any of the terms and conditions of any public contract; or

(2) any failure to comply with the terms or conditions of any public contract in the construction of any public work, building, or structure or to perform, build, or construct it according to the plans and specifications, if any, provided in the contract;

that causes loss, injury, waste, or damage to the state, the municipality, taxing or assessment district, other public entity, or to its citizens, if it is enforceable by assessment or taxation.

(f) The report must ~~be~~ **meet the following requirements:**

(1) **The report must be** made, signed, and verified in quadruplicate by the examiner making the examination. ~~and~~

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(2) The report may be filed promptly with the state examiner at the time the matter is discovered and before the audit is concluded, subject to subsection (j).

After inspection of the report, the state examiner shall file a copy of the report **promptly** with the attorney general.

(g) The attorney general shall diligently institute and prosecute civil proceedings against any or all officers, individuals, and persons in the form and manner that the attorney general determines will secure a proper recovery to the state, municipality, taxing or assessment district, or other public entity injured, defrauded, or damaged by the matters in the report. These prosecutions may be made by the attorney general and the recovery may be had, either upon public official bonds, contractors' bonds, surety or other bonds, or upon individual liability, either upon contract or in tort, as the attorney general determines is wise. No action or recovery in any form or manner, or against any party or parties, precludes further or additional action or recovery in any other form or manner or against another party, either concurrently with or later found necessary, to secure complete recovery and restitution with respect to all matters exhibited, set out, or described in the report. The suits may be brought in the name of the state on the relation of the attorney general for the benefit of the state, or the municipality, taxing or assessment district, or other public entity that may be proper. The actions brought against any defendants may be joined, as to parties, form, and causes of action, in the manner that the attorney general decides.

(h) Any report described in this section or a copy duly certified by the state examiner shall be taken and received in any and all courts of this state as prima facie evidence of the facts stated and contained in the reports.

(i) If an examination, investigation, or test is made without a petition being first filed and the examination, investigation, or test shows that the terms of the contract are being complied with, then the expense of the examination, investigation, or test shall be paid by the state upon vouchers approved by the state examiner from funds available for contractual service of the state board of accounts. If such a report shows misfeasance, malfeasance, or nonfeasance in public office or shows that the terms of the plans and specifications under which a contract has been awarded are not being complied with, it is unlawful to make the report public until the report has been certified to the attorney general.

(j) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent

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of the state examiner determines that all of the following conditions are satisfied, the examiner shall report the determination to the state examiner:

(1) A substantial amount of public funds has been misappropriated or diverted or is unaccounted for.

(2) There is a reasonable likelihood that the final report under subsection (e) or (f) will include a finding that a public contract has not been regularly and lawfully executed and performed or that a public work, building, or structure has not been or is not being performed, built, or constructed in accordance with the terms and provisions of the contract, and in compliance with the plans and specifications, if any.

(3) The malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with the terms of the public contract and laws regarding maintaining and accounting for the funds received in connection with a public contract.

(k) After receiving a preliminary report under subsection (j), the state examiner shall provide a copy of the report to the attorney general. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(l) In an action under subsection (k), the attorney general may attach the defendant's property under IC 34-25-2.

(m) A preliminary report under subsection (j) is confidential until the final report under subsection (e) is issued, unless the attorney general institutes an action under subsection (k) on the basis of the preliminary report.

SECTION 4. IC 34-25-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) At or after the time of filing a complaint, the plaintiff may have an attachment against the property of the defendant, in the cases described in subsection (b) and in the manner described in this chapter.

(b) The plaintiff may attach property when the action is for the recovery of money and the defendant:

(1) is, or one (1) of several defendants is, a foreign corporation or a nonresident of Indiana;

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(2) is, or one (1) of several defendants is, secretly leaving or has left Indiana with intent to defraud:

(A) the defendant's creditors;

(B) **the state;**

(C) **a municipal corporation;**

(D) **a political subdivision; or**

(E) **a school corporation (as defined in IC 20-18-2-16(c));**

(3) is concealed so that a summons cannot be served upon the defendant;

(4) is removing or about to remove the defendant's property subject to execution, or a material part of the property, outside Indiana, not leaving enough behind to satisfy the plaintiff's claim;

(5) has sold, conveyed, or otherwise disposed of the defendant's property subject to execution, or permitted the property to be sold with the fraudulent intent to cheat, hinder, or delay:

(A) the defendant's creditors;

(B) **the state;**

(C) **a municipal corporation;**

(D) **a political subdivision; or**

(E) **a school corporation (as defined in IC 20-18-2-16(c));**

or

(6) is about to sell, convey, or otherwise dispose of the defendant's property subject to execution with the fraudulent intent to cheat, hinder, or delay:

(A) the defendant's creditors;

(B) **the state;**

(C) **a municipal corporation;**

(D) **a political subdivision; or**

(E) **a school corporation (as defined in IC 20-18-2-16(c)).**

(c) The plaintiff is entitled to an attachment for the causes mentioned in subsection (b)(2), (b)(4), (b)(5), and (b)(6) whether the cause of action is due or not.

SECTION 5. IC 34-25-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Except for actions filed by the attorney general under IC 5-11-5-1 or IC 5-11-6-1**, the plaintiff or a person representing the plaintiff shall execute a written undertaking, with sufficient surety, to be approved by the clerk, payable to the defendant, to the effect that the plaintiff will:

(1) duly prosecute the proceeding in attachment; and

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(2) pay all damages that may be sustained by the defendant if the proceedings of the plaintiff are wrongful and oppressive."

and when so amended that said bill do pass.

(Reference is to HB 1514 as printed February 20, 2009.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1514 be amended to read as follows:

Page 5, line 26, delete "the".

(Reference is to EHB 1514 as printed March 11, 2009.)

BRAY

SENATE MOTION

Madam President: I move that Engrossed House Bill 1514, which is eligible for third reading, be returned to second reading for purposes of amendment.

BRAY

SENATE MOTION

Madam President: I move that Engrossed House Bill 1514 be amended to read as follows:

Page 5, line 26, after "(f)" insert "**In an action under subsection (e), the attorney general may attach the defendant's property under IC 34-25-2.**

(g)".

(Reference is to EHB 1514 as reprinted March 13, 2009.)

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1514, which is eligible for third reading, be returned to second reading for purposes of amendment.

BRAY

SENATE MOTION

Madam President: I move that Engrossed House Bill 1514 be amended to read as follows:

Page 8, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 4. IC 5-14-3-3, AS AMENDED BY P.L.2-2007, SECTION 100, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in ~~section~~ **sections 4 and 4.4** of this chapter. A request for inspection or copying must:

- (1) identify with reasonable particularity the record being requested; and
- (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

- (1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.
- (2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by

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or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to any individual or entity for political purposes and may not be used by any individual or entity for political purposes. In addition, the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including

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electronic mail account addresses):

- (1) A list of employees of a public agency.
- (2) A list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution.
- (3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:
 - (A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;
 - (B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or
 - (C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

(g) A public agency may not enter into or renew a contract or an obligation:

- (1) for the storage or copying of public records; or
- (2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

SECTION 5. IC 5-14-3-4.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 4.4. (a) Except as provided in subsection (b), disbursement information reported to the attorney general under IC 23-1-53-1(c), IC 23-17-27-6(c), and IC 30-4-5-12(e) is**

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excepted from section 3 of this chapter if both of the following apply:

(1) The disbursement was made with respect to negotiations with an industrial, research, or commercial prospect for the purpose of persuading the prospect to invest in the locality, to build or relocate a business or organization in the locality, or to perform or provide other economic development services or benefits for the locality.

(2) The person required to prepare the annual report under IC 23-1-53-1(c), IC 23-17-27-6(c), or IC 30-4-5-12(e) specifies in the annual report that the disbursement was made for a purpose set forth in subsection (a)(1) and requests that it be excepted from section 3 of this chapter.

(b) The exception provided under subsection (a) does not apply if:

(1) the attorney general determines that a violation of applicable state or federal law relating to the disbursement has occurred and the attorney general takes enforcement action under the applicable law; or

(2) the attorney general, in furtherance of an investigation, refers the disbursement information to a state, federal, or local law enforcement agency or a government agency with responsibility for enforcement of state or federal law, or a local ordinance, and the agency receiving the disbursement information from the attorney general determines that a violation of applicable law has occurred and takes enforcement action under the applicable law.

SECTION 6. IC 23-1-20-6.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 6.1. "Development agreement" means an agreement that:**

(1) is between:

(A) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and

(B) either:

(i) a person; or

(ii) a unit of local government; and

(2) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

SECTION 7. IC 23-1-20-6.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE

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JANUARY 1, 2010]: **Sec. 6.2. "Development agreement payment" means any payment that a direct or indirect holder of:**

(1) an owner's license under IC 4-33; or

(2) an operating agent contract (as defined in IC 4-33-2-14.6); is required to make under a development agreement.

SECTION 8. IC 23-1-53-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. (a) On written request of any shareholder, a corporation shall prepare and mail to the shareholder annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year most recently completed, an income statement for that year, and a statement of changes in shareholders' equity for that year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the public accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) If a corporation is a recipient of a local development agreement payment, the corporation shall prepare an annual report containing the following information before February 1 of each year:

(1) A verified accounting of all accounts associated with local development agreement payments received in the preceding calendar year.

(2) An itemized list of all disbursements of local development agreement payments made to any person exceeding five thousand dollars (\$5,000) in the aggregate during the preceding calendar year. The itemized list must include:

(A) the legal name of the recipient of a disbursement;

(B) the date of each disbursement;

(C) the amount of each disbursement; and

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(D) the purpose of each disbursement.

(d) The principal officer of a corporation subject to subsection (c) shall annually, before March 1 of each year, file with the attorney general a verified written certification stating that an annual report has been prepared showing at least the items listed in subsection (c). The certification must state that the annual report is available to the attorney general upon request.

SECTION 9. IC 23-17-2-15.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 15.1. "Development agreement" means an agreement that:**

(1) is between:

(A) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and

(B) either:

(i) a person; or

(ii) a unit of local government; and

(2) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

SECTION 10. IC 23-17-2-15.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 15.2. "Development agreement payment" means any payment that a direct or indirect holder of:**

(1) an owner's license under IC 4-33; or

(2) an operating agent contract (as defined in IC 4-33-2-14.6); is required to make under a development agreement.

SECTION 11. IC 23-17-27-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 6. (a) Except as provided in articles of incorporation or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish the member the corporation's latest annual financial statements, which may be consolidated or combined statements of the corporation and the corporation's subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.**

(b) If annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany the statements. If annual financial statements are not reported upon by a

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certified public accountant, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records that does the following:

- (1) States the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describes the basis of preparation.
- (2) Describes any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) If a corporation is a recipient of a local development agreement payment, the corporation shall prepare an annual report containing the following information before February 1 of each year:

- (1) A verified accounting of all accounts associated with local development agreement payments received in the preceding calendar year.**
- (2) An itemized list of all disbursements of local development agreement payments made to any person exceeding five thousand dollars (\$5,000) in the aggregate during the preceding calendar year. The itemized list must include:**
 - (A) the legal name of the recipient of a disbursement;**
 - (B) the date of each disbursement;**
 - (C) the amount of each disbursement; and**
 - (D) the purpose of each disbursement.**

(d) The principal officer of a corporation subject to subsection (c) shall annually, before March 1 of each year, file with the attorney general a verified written certification stating that an annual report has been prepared showing at least the items listed in subsection (c). The certification must state that the annual report is available to the attorney general upon request.

SECTION 12. IC 30-4-1-2, AS AMENDED BY P.L.61-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2. As used in this article:

- (1) "Adult" means any person eighteen (18) years of age or older.
- (2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.
- (3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

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(4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.

(5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.

(6) "Court" means a court having jurisdiction over trust matters.

(7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.

(8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.

(9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

(10) "Minor" means any person under the age of eighteen (18) years.

(11) "Person" has the meaning set forth in IC 30-2-14-9.

(12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

(13) "Principal" has the meaning set forth in IC 30-2-14-10.

(14) "Qualified beneficiary" means:

(A) a beneficiary who, on the date the beneficiary's qualification is determined:

- (i) is a distributee or permissible distributee of trust income or principal;
- (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;
- (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
- (iv) has sent the trustee a request for notice;
- (v) is a charitable organization expressly designated to

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receive distributions under the terms of a charitable trust;
 (vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or
 (vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Trust estate" means the trust property and the income derived from its use.

(18) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(19) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(20) "Trustee" has the meaning set forth in IC 30-2-14-13.

(21) "Development agreement" means an agreement that:

(A) is between:

(i) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and

(ii) either a person or a unit of local government; and

(B) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

(22) "Development agreement payment" means any payment that a direct or indirect holder of:

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- (A) an owner's license under IC 4-33; or
 (B) an operating agent contract (as defined in IC 4-33-2-14.6);

is required to make under a development agreement.

SECTION 13. IC 30-4-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

- (1) all receipts and disbursements since the last statement; and
- (2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal Revenue Code.

(c) Upon petition by the settlor, a beneficiary or ~~his~~ **the beneficiary's** personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time, provided, however, that the court will not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in section 13(a) of this chapter

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with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time provided there is good cause for requiring a statement to be filed.

(e) If a charitable trust or trust for a benevolent public purpose is a recipient of a local development agreement payment, the trustee shall, before February 1 of each year, prepare an annual report containing the following information:

(1) A verified accounting of all accounts associated with local development agreement payments received in the preceding calendar year.

(2) An itemized list of all disbursements of local development agreement payments exceeding five thousand dollars (\$5,000) in the aggregate made to any person during the preceding calendar year. The itemized list must include:

- (A) the legal name of the recipient of a disbursement;**
- (B) the date of each disbursement;**
- (C) the amount of each disbursement; and**
- (D) the purpose of each disbursement.**

(f) The trustee of a trust subject to subsection (e) shall annually file with the attorney general a verified written certification before March 1 stating that an annual report has been prepared showing at least the items listed in subsection (e). The certification must state that the annual report is available to the attorney general upon request."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1514 as reprinted March 24, 2009.)

STEELE

SENATE MOTION

Madam President: I move that Engrossed House Bill 1514 be amended to read as follows:

Page 5, line 20, delete "shall diligently" and insert "**may**".

Page 8, line 26, delete "shall diligently" and insert "**may**".

(Reference is to EHB 1514 as reprinted March 24, 2009.)

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